

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Parks and Recreation Department

**AGENDA DATE:** May 31, 2005

**CONTACT PERSON/PHONE:** Dr. Norman C. Merrifield, Director

**DISTRICT(S) AFFECTED:** Citywide

**SUBJECT:**

Agreement between the City of El Paso, Texas, a municipal corporation ("CITY") and the Sun Bowl Association, a non-profit Organization (APPLICANT").

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This agreement will allow Sun Bowl Association to have the City on behalf of the Parks and Recreation Department hold an international youth soccer tournament known as "2005 Little Caesars Sun Bowl International Soccer Tournament" from June 3, 2005 through June 5, 2005. Soccer parks include Blackie Chesher Park, Galatzan Park (a/k/a Westside Park), Sue Young Park, Nations Tobin Park, Todd Ware Park, Sal Berroteran Park (a/k/a Sun Ridge Park), Franklin Park and Dick Shinaut Park.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

As required by state law and charter, a  
(N/A)

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Funding: N/A

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_

**FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: \_\_\_\_\_)

if RCA is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO

That the City Manager be authorized to sign, on behalf of the Parks and Recreation Department, an Agreement with the Sun Bowl Association, providing co-sponsorship by the Parks and Recreation Department for the 2005 Little Caesars Sun Bowl International Soccer Tournament to be held from June 3, 2005, through June 5, 2005, at the soccer fields located at Blackie Chesher Park, Galatzan Park (a/k/a Westside Park), Sue Young Park, Nations Tobin Park, Todd Ware Park, Sal Berroteran Park (a/k/a Sun Ridge Park), Franklin Park and Dick Shinaut Park, for the purpose of fostering tourism as well as providing recreational, cultural and quality of life benefits to the citizens of El Paso. The City, pursuant to Section 13.24.200, El Paso Municipal Code, will waive the user fee for this tournament.

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

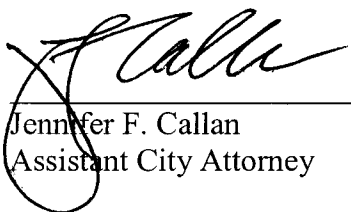
CITY OF EL PASO

ATTEST:


\_\_\_\_\_  
Joe Wardy, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jennifer F. Callan  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Norman C. Merrifield, Ed.D.,  
Director, Parks & Recreation Dept.

STATE OF TEXAS

§

§

COUNTY OF EL PASO

§

**AGREEMENT**

This Agreement is entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of El Paso, Texas, a municipal corporation ("CITY") and the Sun Bowl Association, a non-profit organization ("APPLICANT").

**WHEREAS**, APPLICANT is a sponsor of an international youth soccer tournament known as "2005 Little Caesars Sun Bowl International Soccer Tournament" (hereinafter "Event") to be held from June 3, 2005, through June 5, 2005; and

**WHEREAS**, APPLICANT desires to use the soccer fields located at Blackie Cheshier Park, Galatran Park (a/k/a Westside Park), Sue Young Park, Nations Tobin Park, Todd Ware Park, Sal Berroteran Park (a/k/a Sun Ridge Park), Franklin Park and Dick Shinaut Park (hereinafter "Parks" collectively) for said Event and thus, enters into this Agreement with the CITY; and

**WHEREAS**, APPLICANT desires to have the CITY, on behalf of the Parks and Recreation Department ("Department"), support the Event by co-sponsoring the use of the Parks for said Event; and

**WHEREAS**, the Department has worked closely with APPLICANT on several youth sport competitions and finds that such a partnership furthers the objectives of all parties by increasing the availability of recreational activities for the citizens of El Paso; and

**WHEREAS**, pursuant to Section 13.24.200, El Paso Municipal Code, there is no user fee associated with the use of a City Park for activities sponsored by the City's Parks and Recreation Department; and

**WHEREAS**, the City Council finds that the promotion and conducting of the Event will foster tourism as well as provide recreational, cultural, and quality of life benefits to the citizens of El Paso, and as such, constitutes an important public purpose of benefit to the CITY and citizens of El Paso for which the CITY is willing to make the venues designated in this Agreement available for said Event; and

**NOW, THEREFORE**, for and in consideration of the following promises and mutual covenants of this Agreement, the APPLICANT and the CITY mutually agree as follows:

**1.0 USE OF PROPERTY**

1.1 The CITY hereby grants to APPLICANT a non-assignable right for APPLICANT for the limited use of the soccer fields at the following parks for the Event:

- (A) Galatzan Park, a/k/a Westside Park, 650 Wallenberg Drive, El Paso, Texas;
- (B) Sal Berroteran Park, a/k/a Sun Ridge Park, 2171 Sun Country Drive, El Paso, Texas;
- (C) Nations Tobin Park, 8831 Railroad Drive, El Paso, Texas;
- (D) Todd Ware Park, 4600 Stahala Drive, El Paso, Texas;
- (E) Sue Young Park, 9730 Diana Drive, El Paso, Texas;
- (F) Blackie Chesher Park, 9144 Escobar Drive and 110 N. Zaragosa, El Paso, Texas. The soccer fields at Blackie Chesher Park will be used as back-up fields, if necessary, during the Event;
- (G) Dick Shinaut Park, 1170 Rufus Brijalba, El Paso, Texas. The soccer fields at Dick Shinaut Park will be used as back-up fields, if necessary, during the Event; and
- (H) Franklin Park, 6050 Quail Avenue, El Paso, Texas. The soccer fields at Franklin Park will be used as back-up fields, if necessary, during the Event.

1.2 APPLICANT understands and agrees that the Parks will be used solely for the purpose of holding the Event.

1.3 APPLICANT understands and agrees to keep the Parks in good repair and condition during the term of this Agreement. Further, APPLICANT understands and agrees to reimburse the CITY for the cost of any repair to the Parks, occasioned by excessive damage arising from the Event, as determined to be reasonably necessary in the judgment of the Director of Parks and Recreation Department.

1.4 APPLICANT understands and agrees that it will not use any heavy equipment nor drive any vehicle onto the park grass, without specific prior written approval by the Director of the Parks and Recreation Department.

## **2.0 DURATION AND SCOPE**

2.1 The CITY agrees that APPLICANT may use the Parks as follows:

(A) Friday, June 3, 2005, for registration at either Nations Tobin Park or Blackie Chesher Park from 5:00p.m. through 9:00p.m. for registration only. The APPLICANT agrees that said location used for registration shall be vacated no later than 10:00p.m. on Friday, June 3, 2005.

(B) Saturday, June 4, 2005, the soccer fields listed in Paragraph 1.1 above, from 6:00a.m through 9:00p.m. The APPLICANT agrees that the Parks shall be vacated no later than 10:00p.m. on Saturday, June 4, 2005.

(C) Sunday, June 5, 2005, the soccer fields listed in Paragraph 1.1 above, from 6:00a.m. through 6:00p.m. The APPLICANT agrees that the Facilities will be vacated and that all equipment and other items connected with the Event shall be

removed no later than 7:00p.m. on Sunday, June 5, 2005. In the event that the APPLICANT fails to vacate the Facilities and remove all equipment and other items connected with the Event as specified in this Agreement, the CITY may, at its option and within its sole discretion, either extend the time for removal or remove said materials and charge the cost thereof to the APPLICANT. The APPLICANT agrees to pay all reasonable cost(s) incident to such removal by the CITY.

2.2 APPLICANT agrees to conduct said Event and assist in the promotion of tourism as well as provide recreational, cultural, and quality of life benefits to the citizens of El Paso, from June 3, 2005, through June 5, 2005, in accordance with this Agreement.

2.3 For purposes of conducting the Event, APPLICANT agrees that it will be responsible for the following: (a) the rental of portable restroom facilities for use at the Parks during the Event; (b) the nets to be attached to the CITY's portable goals during the Event; (c) the purchase of the paint to be used by the CITY to mark the soccer fields that will be used during the Event; and (d) security during the Event.

(A) APPLICANT understands and agrees that the CITY is not and will not be responsible for the safety of, security of, or damage to the portable restroom facilities rented by APPLICANT or the nets attached to the portable goals to be used in associated with the Event.

2.4 For purposes of conducting the Event, the CITY agrees that it will be responsible for the following: (a) reserve the soccer fields at the Parks, as described in Paragraph 1.1 above; (b) chalk and/or paint the soccer fields at the Parks, as described in Paragraph 1.1 above, only on June 3, 2005; (c) provide all portable goals at the named Parks in Paragraph 1.1 for use during the Event; (d) provide a 20x20 foot tent for use as the headquarters for the APPLICANT during the Event; and (e) ensure that the sprinklers will be turned-off on the soccer fields at the Parks named in Paragraph 1.1 prior to the field chalking and/or painting on June 3, 2005, through end of Event on June 5, 2005.

### **3.0 CONSIDERATION**

3.1 The CITY shall co-sponsor the Event to permit the use of the soccer fields at the Parks, as described in Paragraph 1.1, by APPLICANT and other participants in the Event without user fees.

### **4.0 LEGAL RELATIONSHIP**

4.1 The CITY may be considered a co-sponsor of the Event only to the extent of affording APPLICANT and participants use of the Parks, as described in Paragraph 1.1, without user fees. Otherwise, nothing in this Agreement shall be construed as creating a legal relationship of co-sponsorship or responsibility for the promotion, conducting or operation of the Event on the part of the CITY. APPLICANT is an independent contractor, and nothing herein shall be construed as creating the relationship of employer and employee or principal and agent between the parties.

## **5.0 INDEMNIFICATION**

**5.1 APPLICANT UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF APPLICANT, ITS AGENTS, STAFF, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS CONTRACT.**

(A) Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to APPLICANT every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

(B) In addition, APPLICANT shall promptly advise the CITY in writing of any claim or demand against the CITY or APPLICANT known to APPLICANT related to or arising out of the activities of the APPLICANT, its agents, officers, staff, employees or representatives under this Agreement.

(C) APPLICANT understands and agrees that it will (1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; (2) negotiate or cause to be negotiated the claim as APPLICANTS may deem expedient; and (3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

(D) APPLICANT understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by APPLICANT pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by APPLICANTS, and premiums on any appeal bonds.

(E) The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving APPLICANT of any of its obligations under this paragraph.

## **6.0 TERMINATION**

6.1 Either party may terminate this Agreement by sending written notice to the other if the other is in default in a matter of serious importance to the aggrieved party.

Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and/or is owing prior thereto.

6.2 APPLICANT understands and agrees that in the event of public necessity, acts of God, and/or any other circumstances beyond the control of the CITY, it becomes necessary for the CITY to cancel this Agreement, the CITY may do so without liability of any type to APPLICANT, and APPLICANT forever releases the CITY from any and all claims whatsoever occasioned by cancellation of this Agreement, pursuant to this paragraph.

6.3 APPLICANT understands and agrees that if the Event is cancelled by the APPLICANT due to public necessity, acts of God and/or any other circumstance, it shall return the contribution made by the CITY specifically for this Event within thirty (30) days of the cancellation.

## **7.0 TERMS AND CONDITIONS**

7.1 EQUIPMENT. All equipment used by APPLICANT shall be maintained in satisfactory working condition. Equipment used shall not be used in any manner that may cause injury to any persons or to the property of the CITY or third parties. Further, APPLICANT understands and agrees that the CITY is not and will not be responsible for the safety and security of any equipment or other materials associated with the Event, nor will the CITY be responsible for any damage to any equipment or materials used in connection with the Event.

7.2 SAFETY AND SECURITY. APPLICANT shall comply with all applicable laws, ordinances and regulations and shall encourage its participants in the Event to comply with all applicable laws, ordinances and regulations. APPLICANT shall exercise every precaution for the safety of public and private property and persons.

(A) APPLICANT understands and agrees that it will provide two (2) uniformed, licensed, security guards or County Deputy Sheriffs at either Nations Tobin Park or Blackie Chesher Park to secure the tent provided by the Department. APPLICANT agrees to provide written documentation establishing the licensure of the security guards to be used for the Event on or by June 1, 2005.

(B) APPLICANT understands and agrees that the CITY is not and will not be responsible for the safety or security of any items associated with the Event nor will the CITY be responsible for any damage(s) to any items or materials used in connection with the Event.

7.3 DISCRIMINATION. APPLICANT, its officers, agents, servants, employees, volunteers and third parties will not discriminate on account of race, color, religion, sex or national origin, nor will it permit or allow any discrimination in the work done pursuant to this Agreement.

7.4 NON-RELIGIOUS ACTIVITIES. APPLICANT will conduct its Event, insofar as it may involve the CITY, in a manner that is exclusively non-religious in nature and scope; there will be no religious services, proselytizing, instruction, or any other religious influences in connection with the Event insofar as it may involve the CITY. There will be no religious discrimination in terms of employment or benefits provided in the conducting of the Event insofar as it may involve the CITY. APPLICANT shall not represent that the CITY is in support of or in favor of any religious services, proselytizing, instruction, or any other religious influences in connection with the Event.

7.5 HANDICAPPED ACCESSIBILITY STANDARDS. APPLICANT agrees, that in the performance of this Agreement, that it will comply with the Americans with Disabilities Act ("ADA"), as may be required by law. APPLICANT, if required, must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

7.6 SOUND AMPLIFICATION. This Agreement constitutes permission for APPLICANT to use sound amplification devices in connection with the Event pursuant to the requirements of Chapter 13.28, El Paso Municipal Code. APPLICANT may use such sound amplification devices only insofar as such do not cause noise that would unreasonably discomfort persons of ordinary sensibilities living nearby.

7.7 LIABILITY. APPLICANT expressly warrants and understands that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. APPLICANT further expressly warrants and understands that every act or omission of the CITY that, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

(A) The CITY will not be liable to APPLICANT, nor any person claiming rights for incidental, consequential, special, punitive or exemplary damages of any kind, whether based on tort, contract or other theory of recovery, including but not limited to lost profits, loss of business, injury to property, mental anguish, emotional distress, negligence, and any other expenses or economic damages. As a result of breach of any term of this Agreement, regardless of whether the CITY was advised, had other reason to know, or in fact knew of the possibility thereof.

(B) In no event shall the CITY's aggregate liability to APPLICANT, including any person or persons whose claim or claims are based on or derived from a right or rights claimed by APPLICANT, with respect to any and all claims at any and all times arising from or related to the subject matter of this Agreement, whether in contract, tort or any other cause of action, whether based on statute or common law, exceed the amount of consideration actually paid by the APPLICANT to the CITY under the terms of this Agreement.

7.8 ALCOHOL. APPLICANT understands and agrees that this Agreement does not constitute a permit to possess and/or consume alcoholic beverages during the Event, in



open park areas, in the Parks named in Paragraph 1.1 or anywhere on CITY premises being used in connection with said Event, pursuant to Section 13.24.150, El Paso Municipal Code.

7.9 CLEAN-UP. APPLICANT agrees that it will remove from the Park and contiguous areas all trash, dog feces and litter generated by the Event. APPLICANT will clean up litter, dog feces and/or trash and place the same in the Park trash receptacles on site.

7.10 PERMITS. APPLICANT agrees to obtain any required permit(s) from the CITY's Building Services Department, including but not limited to food permits and any other permit necessary for the operation of the Event.

7.11 INSURANCE. APPLICANT understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for property damage (including damage to the premises) for the term of this Agreement.

(A) APPLICANT agrees to obtain an insurance policy that includes the CITY, as owner of the premises used to conduct the Event, as an additional named insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required by the Agreement, shall be furnished to the Director of Parks and Recreation Department on or by June 1, 2005. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

## **8.0 COMPLIANCE WITH LAWS**

8.1 APPLICANT shall comply with all applicable federal, state and local laws and regulations, all City ordinances and all codes and regulations. Failure to do so in any manner that materially impairs the quality of performance hereunder or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

## **9.0 SEVERABILITY**

9.1 Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

## **10.0 NOTICES**

10.1 All notices and communications under this Agreement shall be either hand-delivered or mailed by certified mail, return receipt requested, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: Mayor  
City of El Paso  
2 Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901-1196

COPY TO: Director  
Parks and Recreation Department  
2 Civic Center Plaza, 6<sup>th</sup> Floor  
El Paso, Texas 79901-1196

APPLICANT: Bernie Olivas, Executive Director  
Sun Bowl Association  
Los Picos Building  
4150 Pinnacle Street, Suite 100  
El Paso, Texas 79902-1019

#### **11.0 ENTIRE AGREEMENT**

11.1 This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representatives, and understandings relative hereto being herein merged.

(A) The person signing this Agreement on behalf of the APPLICANT warrants that he/she has the authority to do so and to bind the APPLICANT to this Agreement and all the terms and conditions contained herein.

**(Signatures Follow on Next Page)**

WITNESS THE FOLLOWING SIGNATURES AND SEAL on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2005.

CITY OF EL PASO

\_\_\_\_\_  
Joyce Wilson, City Manager

SUN BOWL ASSOCIATION

\_\_\_\_\_  
Bernie Olivas, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer F. Callan  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Norman C. Merrifield, Ed.D., Director  
Parks and Recreation Department